

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 25, 2003 at 8:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 160, 3/10/2003; SB 476,
3/15/2003

Executive Action: SB 454; SB 424; SB 458; SB 323; SB
323; SB 303; SB 451; HB 160

HEARING ON HB 160

Sponsor: REP. DICK HAINES, HD 63, Missoula

Proponents: Jan Sensibaugh, Department of Environmental
Quality
Larry Fasbender, Department of Justice
Judy Jacobsen, Butte-Silver Bow
Linda Stoll, Missoula County
Mike Grayson, County Attorney, Anaconda Deerlodge
County
John Wilson, Montana Trout Unlimited
Jim Davison, Deer Lodge County

Opponents: None

Opening Statement by Sponsor:

REP. DICK HAINES, HD 63, Missoula, opened on HB 160 which would appropriate money from the Coal Severance Tax Permanent Fund to the **Department of Justice** for litigation and assessment of natural resource damage in the Clark Fork River Basin. All the money that is spent is to be repaid from any recovery in the litigation. The Natural Resource Damage Program was created in 1990 to pursue litigation brought against ARCO. A significant settlement occurred in 1998, and the state received about \$230 million. \$130 million was placed in a trust fund administered by the Natural Resource Damage Program to pay for restoration of natural resources in the Clark Fork River Basin. The settlement did not resolve three major claims for damages totaling nearly \$200 million. This money will be used to pursue litigation to get that money. The 2001 legislature approved a loan of \$990,000 from the Coal Tax Fund for the current biennium. Of that \$990,000, only \$340,000 has been spent; it is more like a line of credit. Superfund money can't be used for litigation. If the state does not have the authority to borrow the \$650,000 in the bill, it is likely ARCO will not talk seriously on settling the claims. With the \$650,000, they will negotiate seriously. They believe the continued litigation and negotiation will be successful. The program to date has brought \$200 million to the state and they reimbursed the Coal Tax Fund and reimbursed the lost interest. The bill requires a 3/4 vote in both Houses.

Proponents' Testimony:

Jan Sensibaugh, Department of Environmental Quality, advised she was representing the Governor as a proponent of **HB 160** to fund the Natural Resource Damage Litigation program. This program is essential to the state's best interest in that it seeks restoration costs to return state resources to productive use as well as seeking damages to compensate the public for lost use of natural resources. The projects that have been approved by the program restore areas that have been adversely impacted. This program has been ongoing for a number of years and it is essential for the state to complete this process for all impacted areas.

Larry Fasbender, Department of Justice, appeared on behalf of the Attorney General. **EXHIBIT(fcs63a01)** **SEN. DEBBY SHEA** and **SEN. RICK LAIBLE** were members of the legislative oversight. When the decision was made in 1990 to set up the program, it was determined the most efficient way was to do it internally. The bill requires a 3/4 vote to take the money out of the coal tax, and requires repayment with interest. That has been done in the past, and the payments have been made.

Judy Jacobsen, Butte-Silver Bow, testified on behalf of the Natural Resource Damage Advisory Council. The program has a twelve-year history with a good track record to show they have always been able to pay the money back with interest. They hope the three outstanding lawsuits will be settled soon. The Advisory Council has been doing some excellent work. She urged support of the program.

Linda Stoll, Missoula County, advised the Missoula County Commission is in strong support of the bill. They see this as very critical to the issues associated with Milltown Dam.

Mike Grayson, County Attorney, Anaconda Deerlodge County, urged support of **HB 160** and thanked the Senate for the support of the previous bills that have led to the settled lawsuit. The money that came from the previous part of the lawsuit has been beneficial to Anaconda, Butte, and the whole Clark Fork Basin. The area has been impacted by the mining activity and the Anaconda Company. There have been water line improvement projects, acquisition of wildlife habitat, restoration of stream banks, etc. He urged support of the bill, so the rest of the litigation can be taken care of.

John Wilson, Montana Trout Unlimited, rose in support of the bill. Their vision, shared by all the proponents, is for the upper Clark Fork Basin and the stretch of river from Butte-Anaconda all the way to Missoula. Once the Milltown Dam is removed and the river is re-established, there will be a great

trout stream. That will be great for the community and the other beneficial water users in the basin. In the meantime, jobs will be created.

Jim Davison, Deer Lodge County, said they've seen the successes of past amendments toward this activity and the good work that occurred in Deer Lodge and Silver-Bow County. He urged them to continue to support this investment in Montana's future.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. LINDA NELSON recalled the *McCarty Farms* case, that went on and on and they finally ended up giving it up. She asked if there is a light at the end of the tunnel with this.

Mr. Fasbender advised the difference in the *McCarty Farms* case is the state never realized anything from that. It went on for a long time and was ultimately not settled for the benefit of the state of Montana. Due to the complexity of the issue and the years it took to damage the resource, this is a case that is not going to be settled soon. Progress is being made and he was hopeful substantial progress will be made in the next year regarding Milltown Dam. This is an ongoing project that has been beneficial to the state, and benefits would continue to be seen.

SEN. NELSON said they were facing a company at that time that had deep pockets. Every time the state won, the company would appeal. She wondered if they would go through that with this too.

Mr. Fasbender said there is a possibility of that, but both sides recognize a negotiated settlement will be better than litigating. The litigation component needs to be there to make sure the negotiations take place.

SEN. MIKE COONEY said he understood this would be paid back with interest from the settlements that may be coming in. He asked what happens if there is no settlement.

Mr. Fasbender said there is always that possibility. If there is no settlement, there would not be funds to pay that. If the settlement can't be reached by negotiation, litigation would take place. He was confident there will be a settlement.

SEN. COONEY agreed, but expressed discomfort with borrowing the money out of the coal trust and being unable to pay it back. He thought somehow that money has to be paid back.

SEN. ROYAL JOHNSON asked why they don't use the \$649,000 left in the program authorized in 2001.

Mr. Fasbender advised the money that was authorized last time will revert at the end of this session and re-authorization is necessary in order for that program to be ongoing. The request for the next biennium is not at the same level. They can reduce that as expenditures have gone down, and are only requesting \$650,000 to continue the Natural Resource Damage Program.

SEN. JOHNSON said costs have gone down and they still want the same amount of money as they started with.

Mr. Fasbender said no, they are only requesting \$650,000 this time.

SEN. JOHNSON advised in 2001, they were granted \$990,000 for this program. **Mr. Fasbender** said that is correct.

SEN. JOHNSON said they spent \$321,000, and **Mr. Fasbender** said that is correct.

SEN. JOHNSON said subtracting that leaves \$649,000. He asked if they are currently asking for the same \$649,000 for the next biennium.

Mr. Fasbender said that is correct. They are only asking for the \$650,000. The program is authorized every two years, so the legislature has to take a look at the authorization. They are asking for a re-authorization for \$650,000 for the next biennium so those funds will be available in case they need them for litigation. If the money is not needed, it will not be spent. They have no authority to spend the money that was authorized two years ago. The legislature has to re-authorize and re-appropriate money in order for the program to continue.

SEN. JOHNSON asked if \$650,000 takes care of their current request. He asked if the **Board of Investments** would be willing to loan from some place other than the Coal Tax Fund.

Mr. Fasbender advised the InterCap Loan Program is one approach that possibly could be taken. The **Board of Investments** has to have a guarantee the money will be repaid in some way. They don't know the period of time of repayment. General fund or some other source of revenue would have to be authorized in order to repay a loan with the **Board of Investments**. The money would not be repaid until a settlement is reached. He was not aware of how it could be set up in the InterCap Loan Program without another source of revenue.

CHAIRMAN TOM ZOOK asked if this is for purposes of litigation. They might not win the suit.

SEN. JOHNSON cautioned once a 3/4 vote is taken, there is no opportunity to come back again and reconsider what happened. That is exactly what happened in the Science and Technology Fund.

SEN. BEA MCCARTHY said because there are so many new people on the committee, she felt some background was needed. When the program was first authorized in 1991, the discussion was to come back every two years. They have come back every two years for a 3/4 vote. She asked **Mr. Fasbender** when they did the first repayment.

Mr. Fasbender advised the first repayment was done when the settlement was reached with ASARCO for the \$215 million, and \$15 million of that was negotiated to repay the state for the cost they had incurred--to repay the Coal Fund plus the general fund with interest.

SEN. MCCARTHY said at that point, three sessions ago, they were back to neutral as far as borrowing.

Mr. Fasbender explained by the end of 1997, the state was made whole. They began to borrow again for the second phase.

SEN. MCCARTHY said the first loan from 1991 to 1997 was repaid within a six year period of time. It still had to be renewed in three subsequent sessions of the legislature.

Mr. Fasbender stated every session, they have to get re-authorization.

SEN. MCCARTHY said the second phase is ongoing, and it was her understanding it is getting close to settlement. At that point, they would be repaid and made whole as far as the loan is concerned again, plus interest. She asked about the amount of interest in the first case.

Mr. Fasbender advised the interest was \$3 million. The Coal Trust was made whole. It was just as if the money had been invested in blue chip stocks. It was the average rate of return the coal fund was making, and they were reimbursed in that amount.

SEN. MCCARTHY asked if the interest that was paid was the average interest they were earning on other investments, and if that is the same procedure they will go through this time. **Mr. Fasbender** said that is correct.

Closing by Sponsor:

REP. HAINES closed on the bill and thanked **SEN. MCCARTHY** for her very good questions to bring clarity to the situation. He felt the program had proved itself and needs to go forward.

HEARING ON SB 476

Sponsor: **SEN. EMILY STONINGTON, SD 15, Bozeman**

Proponents: **Dan Anderson, Addictive and Mental Disorders Division**
Kathy McGowan, Montana Council of Community Mental Health Centers
Ed Amberg, Montana State Hospital
Bob Ross, South Central Montana Mental Health Center
Gordon Morris, Montana Association of Counties
Joan Hays, Community Mental Health Center, Butte/Anaconda
Marti Wangan, Montana Psychological Association
Beda Lovitt, Montana Psychiatric Association
Gene Durand, Western Montana Mental Health Center
Mike Grayson, County Attorney, Anaconda/Deer Lodge County
Al Davis, Montana Mental Health Association

Opponents: **None**

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, passed out a schematic to explain the mental health system. **EXHIBIT(fcs63a02) {Tape: 1; Side: B}** In the mental health system, the hospital of last care is Warm Springs. In the past, at peak times, there were almost 2000 people there. In the last 20 years, there has been a movement to take people out of the institutions and mainstream them in communities, etc. She referred to the unsuccessful managed care experiment, and said they then reverted back to a fee for service system. This session, they divided up children's and adult mental health care. She explained the schematic (Exhibit 2). The bill requires screening of a person subject to an involuntary mental health commitment by the Community Mental Health Center. It is an effort to provide a gatekeeper between the district courts and the state hospital to save money. She did not sign the fiscal note. She asked the department to include the \$9 million for medication for the mentally ill who are not qualified for Medicaid. This is through the Mental

Health Services Plan (MHSP). In the adult mental health system, there is a combination of Medicaid qualified people and those who are mentally ill, are not qualified for Medicaid, but who can't afford their medications. The Governor's budget did not fund medications for those people. If the Community Mental Health Centers cannot provide them with medications, those people will be referred to Warm Springs. The \$9 million the Subcommittee appropriated for pharmacy for mentally ill who are not Medicaid qualified is what it is going to take to make this bill work. The department couldn't figure out how to reflect that in the fiscal note. If the \$9 million is not in the fiscal note, she didn't think the bill should pass. She didn't think it fair to put that responsibility on the Community Mental Health Centers without the ability to provide meds for those people to keep them out of the state hospital.

Proponents' Testimony:

Dan Anderson, Addictive and Mental Disorders Division, read from written testimony. **EXHIBIT(fcs63a03)**

Kathy McGowan, Montana Council of Community Mental Health Centers, advised the bill was a collaborative effort. There was a concern about the non-Medicaid eligible adults who were cut out of the budget. They are just as mentally ill as anybody on Medicaid. Medicare does not pay for most mental health services. Community Mental Health Centers have served these people in a variety of ways through a variety of funding streams. These people will end up in jails, emergency rooms, or the state hospital. The Community Mental Health Centers have been on a slim margin since managed care, but are in support of the bill. What this bill recommends is already being done in some areas. In the future, Service Area Authorities will take on the responsibility. She emphasized if they don't get funding for the medications, the bill can't work and would leave the Community Mental Health Centers in a bad situation ethically and financially.

Ed Amberg, Montana State Hospital, explained the state hospital is the one provider that serves people from every town in the state--approximately 700 people per year. The facility was rebuilt to provide a modern therapeutic environment, but it was built a little too small. Most people in the state hospital need to be there. The care provided is cost effective. He supported the bill because it maintains a tie between care givers in the community and care givers at the hospital during the time the patient is at the state hospital. **{Tape: 2; Side: A}** The bill is tied to the provision of medications for the non-Medicaid

population. The bill helps determine more clearly who really needs to be at the state hospital and the alternatives.

Bob Ross, South Central Montana Mental Health Center, advised the critics of the bill would say it's not necessary. One of the duties of a Community Mental Health Center is to provide involuntary commitment screening prior to those individuals going to the state hospital. The courts are not obligated to use the center. This is more of an issue in larger counties. He didn't think it is his job to second guess the court, and that would not be his intent. They are asking for an opportunity to review all of the involuntary commitment folks, so they have an opportunity to offer community service.

Gordon Morris, Montana Association of Counties, supported the bill.

Joan Hays, Community Mental Health Center, Butte/Anaconda, testified she supervises their crisis team. She supports the bill as an integral part of the plan to maintain services to seriously mentally ill people who are not eligible for other resources. She agreed the bill needs the pharmacy benefit.

Marti Wangan, Montana Psychological Association, rose in support of the bill. They recognize the need for gate keeping and thought this would be the best use of the state's limited money for the consumer. They are concerned about the pharmacy benefits for the mentally ill patients, and believe the plan is in serious jeopardy without it.

Beda Lovitt, Montana Psychiatric Association, advised she was the attorney at Montana State Hospital for a number of years, and worked on hundreds of commitment proceedings. Previously, she served as a friend of respondent in the First Judicial District and worked with the public defender for individuals looking at involuntary commitment proceedings. The bill will solidify the relationship between Community Mental Health Centers and the courts. Often, the courts don't know what services are available and what the community can do to keep that person from going to intensive treatment rather than stay in the community. The centers must have the funding for the medications, and without that piece, it won't work.

Gene Durand, Western Montana Mental Health Center, supported the bill. It would consistently require there be an assessment and recommendations of the least restrictive treatment available as an alternative to Montana State Hospital. This will occur at the time of commitment or re-commitment by Community Mental Health Centers. It establishes a fiscal incentive to reduce bed

utilization at MSH. Without the pharmacy benefit, they won't be able to fulfill their mission to serve people in the community.

Mike Grayson, County Attorney, Anaconda/Deer Lodge County, advised the gatekeeper is and should be the district court judge. The bill gets the report by the Community Mental Health Centers to the district judge who decides if there is a less restrictive alternative. The bill fills in a gap in the system. Of the 25 petitions they filed in the previous year, only 13 resulted in full commitment.

Al Davis, Montana Mental Health Association, supported the bill for the reasons already heard. He offered that one in five Montana citizens is suffering from a mental illness. He advised he had been involved in numerous involuntary commitments, and often wished there had been one more step. They believe the bill will provide that gate-keeping step.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. NELSON asked how much more money should be in this to cover medications.

SEN. STONINGTON said \$9 million.

SEN. NELSON asked if there will be a revised fiscal note.

SEN. STONINGTON said she wants to force this financial issue. She thought they need to see how much it will cost to make this system work. The \$9 million is critical. Their Subcommittee funded the \$9 million in the Prevention and Stabilization Account that is part of **HB 2**.

SEN. JOHN ESP asked about the chart and why there were no mental health consumers or families and where they fit into the scheme.

SEN. STONINGTON advised consumers of mental health services and the families of those consumers have historically been left out of the picture of how the whole system is administered. The SAA concept is the first major effort to bring all into the system, including the families and consumers of the services.

SEN. ESP referred to another bill dealing with involuntary commitment and asked which was the better attempt at gate keeping.

SEN. STONINGTON said she would have to review the other bill.

SEN. ESP asked about funding the pharmacy benefit and the subcommittee bill involving the use of tobacco prevention money.

SEN STONINGTON advised the Subcommittee had a committee bill that established a special revenue account titled the Stabilization and Prevention Account. That account is essentially unfunded. It is dependent on tobacco tax increases, **SB 407**, or potentially a portion of the tobacco prevention money. The hospital provider rate increase bill will be administered through that account.

SEN. ESP asked if some compromise could be reached on the prevention dollars, if that would be one place to fund the pharmacy benefit.

SEN. STONINGTON advised the negotiations with the tobacco people have been for a one-time only appropriation for this biennium. They are willing to negotiate on some portion of the tobacco prevention money being used to meet the budget needs of this biennium.

SEN. TRUDY SCHMIDT asked **Mr. Anderson** about the bill **SEN. ESP** was talking about.

Mr. Anderson said the bill requires the department to be notified whenever an involuntary commitment was filed. It was a minimal kind of gate keeping, but he didn't think it supplants this bill.

SEN. SCHMIDT wondered about the \$9 million and the difficulties with getting the fiscal note. She wondered how the \$9 million figure was arrived at.

Mr. Anderson advised it is what they project for the cost of providing the pharmacy benefit to this non-Medicaid adult group of people. It is a biennial figure. He discussed how that could be put into this bill with their fiscal people. They decided because the passage of this bill does not cause that cost, it couldn't be connected directly.

SEN. SCHMIDT asked why. **Mr. Anderson** said fiscal notes are not within his expertise, but passage of this bill does not obligate the \$9 million expenditure.

SEN. SCHMIDT noted the \$9 million is an integral part of the bill and she wondered how they could get to that point.

Mr. Anderson advised the bill could be passed without that appropriation being made. It would be difficult for the mental health centers to successfully find alternative services for the people in the community if that medication benefit wasn't

available. The requirement they screen the people can still be in place.

SEN. SCHMIDT asked **SEN. STONINGTON** to respond.

SEN. STONINGTON said if the \$9 million is not funded, there will be more people in Warm Springs. That is why the department said it could not be put into a fiscal note. If the bill passes, and the \$9 million is not funded, they can do screening, but will just ship them off to Warm Springs if they can't afford the meds. They weren't able to justify it in a cause and effect way.

SEN. LAIBLE asked **Mr. Anderson** about the number of Community Mental Health Centers.

Mr. Anderson replied there are four, and each serves a multi-county region of the state.

SEN. LAIBLE asked how many patients are served overall in the state, counting the Community Mental Health Centers, etc.

Mr. Anderson said they serve about 20,000 to 25,000 children and adults per year. That includes state facilities, the four Community Mental Health Centers, and other providers.

SEN. LAIBLE asked how many qualify for Medicaid or other resources.

Mr. Anderson advised the great majority of the people they serve in the system are Medicaid eligible. In the previous year, they served 4500 adults who were not Medicaid eligible. Almost all the children they serve are Medicaid eligible.

SEN. LAIBLE asked what the budget is to serve those 4500 people.

Mr. Anderson said it has been about \$10 million to \$12 million.

SEN. LAIBLE asked if Community Mental Health Centers provide drugs to those that can't afford medications.

Mr. Anderson indicated there are several ways one could get medication. One is Medicaid, one is the non-Medicaid state program funding in **HB 2**, and there is some limited ability through the pharmaceutical companies. *{Tape: 2; Side: B}*

SEN. ESP asked **Mr. Grayson** about the process involved in involuntary commitment.

Mr. Grayson advised they get a call from the emergency room that there is someone with chronic depression threatening to kill themselves. They are unwilling to stay in the hospital, etc. They summon the Western Montana Mental Health Crisis Response Team, the patient is evaluated, and they are detained at the state hospital which is in his county. They appoint a lawyer, file a petition to commit them for a ninety day period, have a reevaluation by a second mental health professional, and then the bill would require a report by WMMHC regarding where the person will best be served.

SEN. ESP asked about his county where there is no full time professional person.

Mr. Ross advised Sweetgrass County not only uses the person who commutes from Columbus, they have also used a professional from Livingston.

SEN. ESP asked if those two professional persons are employees of the Community Mental Health Center. **Mr. Ross** indicated yes. In the smaller communities the Community Mental Health Centers are almost exclusively the providers available to the county.

SEN. BARKUS referred to the fiscal note and asked if passage of the bill could result in long term savings, etc.

SEN. STONINGTON said yes, if they get funding for the medications.

SEN. SCHMIDT asked **Mr. Anderson** if the Great Falls Community Mental Health Center is in support of this bill.

Mr. Anderson advised the four mental health centers were directly involved in the development of the bill.

SEN. SCHMIDT stated, with a potential \$9 million appropriation, the bill really belongs in the House and asked **SEN. STONINGTON** if that is correct.

SEN. STONINGTON said the bill has no statutory appropriation; it has a financial implication.

Closing by Sponsor:

SEN. STONINGTON said the bill is referring to serious mental illness--people who cannot manage their own lives. Those people go across all socioeconomic boundaries. When talking about commitment, the legal standard is those who are of imminent danger to themselves or others. The bill obligates the courts to

use expertise and resources of the Community Mental Health Centers. The reason this is not in the Executive budget is they said they couldn't afford it. They did not fund the state hospital for any more than 175 people. Either it is funded up front with adequate money, or there will be more people in Warm Springs. She advised she will be offering amendments that have to do with the re-commitment process.

- Recess - 9:45 -
- Reconvene 9:30 -

EXECUTIVE ACTION ON SB 454

Motion: SEN. BALES moved that SB 454 DO PASS.

Discussion:

SEN. BALES advised the reason the bill is before them is because of the mix-up regarding money that should have been going to the counties out of **HB 124**. The bill is necessary to get the counties back where they need to be.

SEN. JOHNSON asked if the fiscal note is true and that 2003 is short.

Taryn Purdy, Legislative Fiscal Division, advised the 2003 numbers are included in **HB 3**, which is the supplemental bill. It has already been accounted for in the anticipated ending fund balance.

SEN. JOHNSON asked if the ending fund balance includes the payoff of the \$100 million.

Ms. Purdy advised it includes everything and the state is still in a positive position.

SEN. ESP recalled that **Chuck Swysgood, Budget Director**, had asked them to consider changing the effective date to July 1, 2003. It would save some money in this biennium.

Amy Carlson, Governor's Office, advised it would save about \$377,000 in FY 2003, and in the long run would fix the county problem.

Motion: SEN. ESP moved TO AMEND SB 454, CHANGING THE EFFECTIVE DATE.

SEN. JOHNSON said that is the reason for his question to **Ms. Purdy**. He understood by her answer they were still alright. He asked if this is an attempt to save another \$377,000 in 2003, and would that be the effect.

Ms. Purdy advised the projected ending fund balance assumed that **HB 3** appropriations are in it, and **HB 3** currently does include \$377,000 in fiscal year 2003 for this purpose. Changing the effective date would save that amount of money in this year. When **HB 3** comes before the committee, they will want to amend out that money.

SEN. JOHNSON advised they would then be \$377,000 closer to being sure.

SEN. MCCARTHY asked if they were saving the state \$377,000 by delaying the payment to the counties for a period of four months. She asked if the counties will then be shorted.

CHAIRMAN ZOOK advised they'll get the money, but will get it a little late.

Ms. Carlson said they would actually get what was authorized in the special session in **HB 18**. The counties all based their budgets on those numbers that they levied. For fiscal year 2003, they would not get the change in the money. The allocation will be changed in fiscal year 2004, and all the years after that.

CHAIRMAN ZOOK advised it is not money that they were counting on in this year anyway.

SEN. MCCARTHY said it was not money they were counting on in 2003, but it was money they were promised in **HB 124**.

Ms. Carlson said **HB 124** had that amount for every county, and they adjusted that in **HB 18**, which is in current law.

CHAIRMAN ZOOK advised the mistake was made by the counties in not reporting correctly.

SEN. SCHMIDT asked if there is going to be significant local government impact.

CHAIRMAN ZOOK advised not in this year; there will be a positive impact this year.

SEN. SCHMIDT asked where that is in the bill.

CHAIRMAN ZOOK advised it is in the fiscal note on fiscal year 2004 and 2005.

SEN. BALES explained if they change the date, the taxpayers in some of the counties will pay a little more for this year than what they normally should have. Having lived in a county that was zeroed out in the special session, he advised he would vote against delaying the effective date. **{Tape: 3; Side: A}**

CHAIRMAN ZOOK advised at this point in time, the levies have already been made. On July 1, they will get this additional money. In theory, in the next taxable year they should get a reduction. He didn't think it's a hit on the taxpayers.

SEN. BALES asked if counties get paid this money, would it cost the counties a mill less the next time.

SEN. ZOOK said thought they would be able to levy this many dollars less than they would have in the next taxable go-round.

SEN. BALES asked **Jim Standaert** if the taxpayers of those counties may get a benefit or a loss over and above what they normally should have gotten if they delay the effective date. By delaying the effective date the state will save \$377,000, but that is money the counties will have to increase their mill levies to take up. He asked if the state pays the counties back this money, will they be able to reduce their mill levies in order to compensate for that.

Jim Standaert, Legislative Fiscal Division, advised the money would then be paid after June 30, 2005 to these counties. That would push their receipt of that money back a couple of months. The question is can they plan for that money in the next fiscal year in setting the mill levies. He believed they can plan whether they receive it two months early or in July. It will have the same effect on the mill levy.

Vote: Motion carried 16-1 with **BALES** voting no.

Vote: Motion that SB 454 DO PASS AS AMENDED carried unanimously.

EXECUTIVE ACTION ON SB 424

Motion: **SEN. NELSON** moved that SB 424 DO PASS.

Discussion:

SEN. NELSON advised the bill is intended to be revenue neutral. It increases the entitlement limits for school funding facility

payments, and breaks down the block grant into three different block grants.

CHAIRMAN ZOOK asked if it pays X number of dollars per bus.

SEN. NELSON advised it increases the transportation mileage rates and eliminates the rider-ship requirement. It cuts **HB 124** block grants in half to district transportation accounts, and increases the school facility reimbursement rates, etc.

CHAIRMAN ZOOK commented it is interesting it comes out revenue neutral.

Ms. Carlson advised the bill is designed to be revenue neutral. They knew how much the **HB 124** block grants were, and designed the spending increases to match that. In the case of facilities, they knew how much the block grant was, and so they tried to raise the facilities cost in order to match that.

CHAIRMAN ZOOK asked how it affects bienniums further out.

Ms. Carlson advised the transportation rates will go up and they'll stay up, but shouldn't increase beyond that. The increases in the facility payments could increase the state obligations in the future because of the higher level that districts will be eligible for.

SEN. ESP expressed concern about the effect on counties. Counties will be required to match the \$1.7 million. The school districts may or may not choose to reduce property tax with the money they're getting. It looked to him like a shift to the local taxpayers.

Ms. Carlson advised district transportation levies are permissive, so the district can levy whatever they choose to in order to fund their transportation program. Expenditures are not anticipated to change as a result of this bill. It should reduce local district property taxes.

CHAIRMAN ZOOK maintained districts have a choice.

Ms. Carlson said they would anyway. The district transportation levy is permissive. If they felt they had a need in transportation, they could raise it anyway. This bill doesn't change it.

SEN. ESP had a question regarding increasing transportation.

Ms. Carlson advised the final expenditure occur in the district. The bill shouldn't change how much they need to spend on transportation, it would just change how much of it is funded by the state and county and how much by the district.

SEN. ED BUTCHER expressed concern about shifting from per student to per bus. **Ms. Carlson** advised the size of the bus is the driving factor.

SEN. BUTCHER said this would be an incentive for the schools to run more empty buses. **Ms. Carlson** said **Kathy Fabiano, OPI**, doesn't think that will happen because of how the transportation really works.

SEN. BUTCHER expressed further concern about running bigger buses empty, and encouraged the rethinking of some of the bus runs.

SEN. JOHNSON advised the bill is familiar and asked if they'd seen a similar bill in the **Subcommittee on Education**.

Ms. Carlson advised **REP. HAL JACOBSON'S** bill had the transportation piece, but did not provide the **HB 124** block grants as a funding source. It had an increase in expenditures of \$1.7 million a year.

SEN. JOHNSON asked if the bill was heard in the House when they heard **HB 2**.

Ms. Carlson revealed they covered all the Governor's bills, and this is one of the bills they discussed in Subcommittee.

SEN. ESP said he didn't think this was the direction they need to be heading. This was dealt with in Subcommittee as an amendment in **HB 2**. That motion was tabled, and a separate bill was tabled. Other bills will try to fund other parts of education with **HB 124** block grants. He thought they need to look at the buses and how they are operating. There is \$50 million to \$60 million a year spent on school buses. The legislature should look at that and see if they really need to spend that money on transportation or should they be looking to shift some of that into the classroom.

SEN. NELSON asked **Ms. Carlson** what happens if the bill goes down.

Ms. Carlson advised the **HB 124** grants will continue as they currently are.

SEN. NELSON asked if some of the money that gets taken away in this bill will get into the classroom.

Ms. Carlson said no, the same amount will go to the classroom.

SEN. NELSON asked if there is some means to get it into the classroom.

Ms. Carlson advised this bill takes away just the transportation money as opposed to current law. Under current law, **SB 436** allowed districts to transfer non-levied money between funds. A district could transfer transportation block grant money into the flex funds, and at least one did in FY 2002. The flex fund money could be spent in the classroom. This bill only takes \$1.7 million a year away from that possibility. She was not sure if they could get the facility money out of debt service or not.

SEN. NELSON asked if her answer was maybe, leaning to yes. **Ms. Carlson** thought it was true under either case.

SEN. NELSON asked **Lance Melton, Montana School Boards Association**, about **SEN. BUTCHER'S** concern about weighted ridership and if there is an advantage to districts in going to bigger buses just to collect money.

Mr. Melton stated in his experience, trustees are fairly conservative in their application of transportation funds and bus depreciation reserve funds. The bus depreciation reserve funds can be used to replace existing buses or add a new one for curriculum purposes only. The statute is fairly restrictive in what a school district can levy in its bus depreciation reserve fund in order to purchase buses. The most frequent calls they get ask what is the lowest size bus they can buy and still stay in compliance with federal and state standards.

CHAIRMAN ZOOK explained the fiscal note changes the mileage rate, the state's obligation will increase by \$1.7 million, and the counties are obligated to match that. It could have a financial impact all around.

SEN. JOHN COBB asked if the bill goes down, would Sections 1 and 2 still be needed or is the bill one big package.

Ms. Carlson advised they can pass or not pass the whole bill. The sections are facilities, transportation, and one is the combination. They could eliminate a section if they wanted to.

SEN. COBB thought if the bill goes down, part of it could be resurrected.

Vote: Motion that SB 424 DO PASS failed 8-11 with COBB, COONEY, NELSON, SCHMIDT, STAPLETON, STONINGTON, TESTER, and TROPILA voting aye.

Motion/Vote: SEN. BALES moved that SB 424 BE INDEFINITELY POSTPONED. Motion carried 11-8 with COBB, COONEY, NELSON, SCHMIDT, STAPLETON, STONINGTON, TESTER, and TROPILA voting no.

EXECUTIVE ACTION ON SB 458

Motion: SEN. SHEA moved that SB 458 DO PASS.

SEN. MCCARTHY advised, for informational purposes, she had passed out a signed statement from the **Office of Political Practices**. She asked **Roger Sullivan, Attorney**, if he was a registered lobbyist at 10:00 in the morning during the hearing on March 18, 2003. She didn't feel he adequately answered her question, so she called the **Office of Political Practices**. At the time of the hearing, **Mr. Sullivan** was not a registered lobbyist. He chose to register at 3:01 that afternoon. She brought it up because he had been in the halls for the week prior to the hearing, and made the statement in his testimony that he had visited with both the majority and minority leader. In her mind, he was doing lobbying work, and she wanted to verify that and bring it to everyone's attention.

SEN. STONINGTON advised she had been very troubled by the bill. She had a lot of sympathy for what Northwestern had experienced. She asked a lot of questions and talked to a lot of people and lobbyists about this. She thought Northwestern has a strong case in the issue before the courts. For her, the issue was whether the legislature should be retroactively immunizing Northwestern in a court case. They are in the middle of litigation, and the courts are the place the litigation should be decided. The reason they came to the legislature is they feel they have a biased judge. She thought they may have a biased judge, but the courts still need to resolve that issue. **{Tape: 3; Side: B}**

SEN. MCCARTHY advised regardless of what is done, it is going to court. This issue is too large to stop at this point. It will definitely go to the **Supreme Court** before its through.

SEN. JOHNSON agreed with SEN. STONINGTON. He thought the legislature should have never been included in the situation. Going back to the ARCO deal, the state might have been in bad shape had they put this bill into effect. He wanted the legal system to decide.

SEN. SHEA thought the most compelling part of the whole argument is **Mr. McGarvey** and **Mr. Sullivan** were very complacent about Northwestern going bankrupt. In her community, there are shareholders that want to recover their loss, but not at the expense of a company who clearly did not have any role in decisions that Touch America made. It is an overwhelming outcome for Butte and for the state. The entities that are clearly responsible should be paying for this, not Northwestern. She urged a do pass.

SEN. LAIBLE agreed with **SEN. SHEA**. He had done some research and read the transcript of the trial. He had asked **Mr. Sullivan** which one is the successor entity, because he felt there are two successor entities--Touch America and Northwestern Energy. He thought this is too big an issue to die in committee, and wanted to see it get on the floor. He thought it was evident the judge made the determination of who should be on this lawsuit based on who has money.

Vote: Motion failed 9-10 with **BALES, BARKUS, BUTCHER, KEENAN, LAIBLE, MCCARTHY, SHEA, TASH, and ZOOK** voting aye.

SEN. COBB advised the bill could be amended and passed out of committee. He didn't think Sections 2 and 3 were needed. He wanted to talk to **Greg Petesch, Legislative Services**, because that codifies it for all corporations. He thought they just wanted to do it for one company.

EXECUTIVE ACTION ON SB 323

Motion: **SEN. ESP** moved that SB 323 DO PASS.

Motion: **SEN. BILL TASH** moved TO AMEND SB 323 (SB032311.ace).
EXHIBIT(fcs63a04)

Discussion:

Ms. Carlson said the amendment takes the CPI out of the bill, as **Director Chuck Swysgood** discussed with the Committee.

Vote: Motion carried unanimously.

Motion: **SEN. TASH** moved TO AMEND SB 323 (SB032312.ace).
EXHIBIT(fcs63a05)

Discussion:

Ms. Carlson explained the amendment clarifies some of the language on health benefits. It eliminates language in Section 6 of the bill. It would be effective immediately that for all employees hired with federal dollars, the retirement fund will have to be paid with federal dollars.

Vote: Motion carried 10-9 with COBB, COONEY, MCCARTHY, NELSON, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA voting no.

Motion: SEN. MCCARTHY moved TO AMEND SB 323 (SB032314.ace).
EXHIBIT(fcs63a06)

Discussion:

SEN. MCCARTHY advised the amendment removes the block grant provisions from the bill, and it goes to reduce taxes for the county retirement fund. Because of declining enrollments, schools are going to be having problems in two years anyway.

Madalyn Quinlan, OPI, advised the amendment would remove Section 5 from the bill so that the block grants would continue to flow to the county retirement fund. The county block grant source is a growing revenue source. As there is declining enrollment, the \$21 million will be used to fund the schedules now.

SEN. ESP asked about the block grants.

Ms. Quinlan advised the block grants for county retirements are roughly \$10.5 million each year or \$21 million for the biennium.

Vote: Motion failed 9-10 with COONEY, ESP, MCCARTHY, NELSON, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA voting aye.

Motion: SEN. MCCARTHY moved TO AMEND SB 323 (SB032313.ace).
EXHIBIT(fcs63a07)

SEN. MCCARTHY advised the amendment starts on line 8 in the title,, and changes the way in which the school district makes the contributions to the retirement fund, and then continues on page 5. She didn't think school districts should be funding employees benefits through federal money. She had asked **Director Swysgood** at what point they become federal employees; if their retirement, insurance, benefits, and salary are going to be funded with federal money, at what point does that employee become a federal employee rather than a school district employee.

Discussion:

CHAIRMAN ZOOK asked when a federal employee stays a federal employee or becomes a state employee.

Ms. Purdy believed it comes down to who has control of the money. At times the state acts on behalf of the federal government in providing these programs. The state determines how many FTE, etc. Because it is a state program in partnership with the federal government, they are state employees although they are entirely funded with federal funds.

SEN. MCCARTHY commented in some cases the employee may choose to be a federal employee. The benefits might be better for them, and she thought this type of legislation might lead to that situation.

SEN. ZOOK didn't think someone a school district hired would have a choice of becoming a federal employee or not.

SEN. ESP thought amendments 4 and 5 are already on the bill. The bulk of the change is on page 6 of the bill.

SEN. MCCARTHY advised Montana has three federal job corp facilities with state and union employees who contract with the federal government. They do not get any federal benefits of any kind, and keep their union benefits and state benefits. They contract with the holding company which is the federal government. She felt if they pass legislation like this, the co-ops could negotiate contracts for special ed teachers and they could become federal employees.

SEN. JOHNSON said Special Education is in the original wording in the title. He thought the federal government should give the state enough money to take care of the benefits for those employees. Most of those employees are employees of a co-op, not necessarily the school district.

Vote: Motion failed with 8-11 with **COONEY, MCCARTHY, NELSON, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA** voting aye.

SEN. STONINGTON advised on the first amendment that stripped the CPI increase, she would like to record her vote, **SEN. SCHMIDT's** vote and **SEN. COONEY's** vote as no.

CHAIRMAN ZOOK advised all the D's would be recorded as no.
(SB032311.ace - Exhibit 4) **SB 332** was set aside. {Tape: 4; Side: A}

EXECUTIVE ACTION ON SB 303

Motion: SEN. SHEA moved that SB 303 DO PASS.

Motion: SEN. SHEA MOVED TO AMEND SB 303 (SB030302.ace).

EXHIBIT(fcs63a08)

Discussion:

SEN. SHEA advised the growing enrollment in many areas of the state is of real concern. It is a burden for these districts to do the three year averaging when their enrollments are steadily increasing. The amendment will use averaging only with declining enrollment.

Vote: Motion carried 11-8 with BALES, BARKUS, COBB, JOHNSON, KEENAN, STAPLETON, TASH, and ZOOK voting no.

Vote: Motion that SB 303 DO PASS ANS AMENDED failed 8-11 with COONEY, MCCARTHY, NELSON, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA voting aye.

Motion/Vote: SEN. TASH moved that SB 303 BE INDEFINITELY POSTPONED. Motion carried 11-8 with COONEY, MCCARTHY, NELSON, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA voting no.

EXECUTIVE ACTION ON SB 451

Motion: SEN. ESP moved that SB 451 DO PASS.

Motion: SEN. ESP moved TO AMEND SB 451 (SB045101.atp).

EXHIBIT(fcs63a09)

Discussion:

SEN. COONEY asked if the \$9 million will stay in the Tobacco Prevention/Cessation Programs.

SEN. ESP said that question addresses the bill, not the amendment.

SEN. SHEA advised she supported the bill and favored the referendum. She asked if he would mind using some of this money for mental health because there is a crisis. She thought it was an excellent bill and hated to see it amended.

SEN. ESP advised there are still some ongoing negotiations that may lead to some resolution. If they don't, he did the best he could.

Vote: Motion carried 18-1 with BUTCHER voting no.

Motion: SEN. ESP moved that SB 451 DO PASS AS AMENDED.

SEN. ESP said the bill will allow 17% of the tobacco settlement funds, in addition to CHIP and the uninsurable plan, for Medicaid treatment of smoking related illnesses and for funding the Mental Health Services Plan. On page two, line three qualifies types of advertising and prohibits the use of advertising in the political process.

SEN. JOHNSON advised he had a real desire to vote for this motion, but he was not going to because it disagrees with the vote of the people. He thinks the idea is tremendous, and he voted against the way the initiative wanted to do it.

SEN. BUTCHER advised he is a strong supporter of the initiative process. He thought this was really fine tuning and redefining. In every session, they are constantly fine tuning and redefining laws they passed or predecessor legislators passed in previous sessions. If this train of thought was followed, they would never change past statutes as times change. The bill would not throw out the Tobacco Prevention money being used for tobacco. Other than advertising not being used to influence the political process, the bill actually deals with people rather than the money simply going into the pockets of a bunch of advertisers. His concern with the original initiative the people passed was it would fund a lot of advertising agencies. He felt the bill was not going against the people's bill--it is a response back to them.

CHAIRMAN ZOOK advised SEN. JOHNSON has great sympathy for what SEN. ESP wants to do, but also doesn't feel comfortable going against a vote of the people. There is a constitutional question that the people can't appropriate by initiative and that's something being challenged.

Vote: Motion carried 12-7 with COONEY, JOHNSON, NELSON, SCHMIDT, STONINGTON, TESTER, and TROPILA voting no on a voice vote.

EXECUTIVE ACTION ON HB 160

Motion/Vote: SEN. MCCARTHY moved that HB 160 BE CONCURRED IN.
Motion carried 18-1 with JOHNSON voting no.

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs63aad)